

Assembly Bill 2898 (Committee on Revenue & Taxation) Chapter 1052
Private Railroad Car and Timber Yield Taxpayers Bill of Rights

Effective January 1, 2001. Amends Sections 11253, 11597, 38452, and 38504, and adds Sections 11253.5, 11453, 11553.5, 11656, 11657, 38503.5, 38504.5, 38602.5, 38707, and 38708, to, the Revenue and Taxation Code.

For the Private Railroad Car Tax program and the Timber Yield Tax program, this Board of Equalization-sponsored bill:

- **Authorizes the Board to establish criteria to provide relief of the late payment penalty in a more efficient manner.**
- **Provides relief to a taxpayer whose employer withheld delinquent taxes or fees from the taxpayer's pay, but failed to remit the amounts to the Board.**
- **Provides relief of the late payment penalty in cases where the taxpayer enters into and successfully complies with an installment payment agreement.**
- **Prohibits the disclosure of confidential taxpayer information by tax preparers.**
- **Changes the effective date for which reimbursement of fees and expenses may be awarded so that taxpayers may claim reimbursement commencing from the date the notice of determination, jeopardy determination, or denial of claim for refund is issued.**
- **Suspends the statute of limitations on filing refund claims during periods of disability.**
- **Requires the Board to provide annual statements summarizing the payment and liability information to taxpayers who have entered into installment payment agreements.**

Background:

The Harris-Katz California Taxpayers' Bill of Rights was enacted in 1988 (Ch. 1574), effective January 1, 1989, to place certain guarantees in the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. The Katz-Harris Taxpayers' Bill of Rights, also enacted in 1988, placed similar guarantees in the California Personal Income Tax Law and the Bank and Corporation Tax Law. Conforming taxpayer rights were added to the Board-administered Special Taxes programs in 1992 by Chapter 438.

On July 30, 1996, Congress enacted the federal Taxpayer Bill of Rights 2 to provide an additional set of taxpayer protections under the federal income tax laws. As a

conformity measure, the Franchise Tax Board sponsored AB 713 (Ch. 600, Stats. 1997) to conform many of its bill of rights provisions to the 1996 federal changes.

In 1998, the Board sponsored Assembly Bill 821 (Ch. 612, Takasugi) to conform California sales and use tax laws to the Franchise Tax Board's AB 713. Effective January 1, 1999, AB 821 expanded, modified and supplemented the Katz-Harris Taxpayers' Bill of Rights Act with respect to relief of interest, installment payment agreements, interest on erroneous refunds, education and information programs, reimbursement of certain fees and expenses, return of levied property, and release of liens to facilitate collection or when it is in the best interest of the state and taxpayer.

Also in 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998. In addition to providing for a massive reorganization of IRS and the way it does business, this Act included various taxpayer rights protections, including greater relief of liability for innocent spouses, statute of limitations relief for financially disabled taxpayers, increased tax agency notification requirements, and many others.

In 1999, California conformed its Sales and Use Tax and Personal Income and Bank and Corporation Tax Laws to several of the taxpayer rights provisions in the IRS Act through the enactment of AB 1638 (Chapter 929, Statutes of 1999) and SB 94 (Chapter 931, Statutes of 1999).

Late Payment Penalties

Revenue and Taxation Code Section 11597, 38452

Authorizes the Board to establish criteria to provide relief of the late payment penalty in a more efficient manner.

Law Prior To Amendment:

Under Section 6592 of the Sales and Use Tax Law, and similar statutes in the Board's special taxes and fees program, the Board is authorized to relieve persons of the penalty imposed for a person's failure to make a timely return or payment, when the Board finds that the failure was due to a reasonable cause. To be relieved of the penalty, the law requires that the person seeking relief file a statement under penalty of perjury setting forth the facts upon which his or her claim for relief is based.

Comment:

This provision enables the Board to establish criteria that would allow for a more efficient process to provide relief of penalty, by for example, eliminating the requisite statement under penalty of perjury from the person seeking relief under the established criteria.

Employer Withheld Taxes*Revenue and Taxation Code Section 11453, 38503.5*

Provides relief to a taxpayer whose employer withheld delinquent taxes or fees from the taxpayer's pay, but failed to remit the amounts to the Board.

Law Prior To Amendment:

Under Section 6703 of the Sales and Use Tax Law, and similar statutes in the Board's other tax and fee programs, if a retailer or other person liable for the tax is delinquent in his or her payment of amounts due, the Board is authorized to take administrative collection action. One such action is the issuance of earnings withholding orders for taxes or fees pursuant to the Code of Civil Procedure. These orders require employers to withhold delinquent taxes or fees from an employee's earnings and remit the withheld amount to the Board. This situation arises when the taxpayer, at the time of this action, is employed by another, as for example, a purchaser of an aircraft who is delinquent in his or her payment of use tax to the Board. In cases where the employer fails to remit the withheld amount to the Board, the employee continues to remain liable to the Board for the amounts withheld and, other than obtaining a civil action against the employer, the Board has no authority to take administrative collection action against the employer. Under existing law, the Board has no authority to credit the account of the tax or feepayer for the amount the employer withheld and failed to remit. In addition, the Board does not have authority to stop collection action against the tax or feepayer.

Comment:

This provision, which is consistent with the authority granted to the Franchise Tax Board by SB 94 (Ch. 931, Stats. 1999), provides relief to a tax or feepayer whose employer withheld delinquent taxes or fees from the tax or feepayer's pay pursuant to an earnings withholding order, but failed to remit the amounts to the Board. Specifically, this provision:

- Eliminates the tax or feepayer's liability for the unremitted amount by allowing the Board to credit the taxpayer's account for the unremitted amount.
- Holds the employer liable for the unremitted amount by allowing the Board to administratively assess an amount equal to the unremitted amount against the employer.
- Stops collection action against the tax or feepayer for the amount.

Installment Payment Agreements – Late Payment Penalties
Revenue and Taxation Code Section 11253, 38504

Provides relief of the late payment penalty in cases where the taxpayer enters into and successfully complies with an installment payment agreement.

Law Prior To Amendment:

Under current law, the Board may enter into a written installment payment agreement with a person for the payment of any taxes or other amounts due over an agreed period. Generally, if a taxpayer is late in payment of those taxes, a penalty of 10% of the tax is added.

Comment:

This proposal provides that, if a person entered into a written installment payment agreement with the Board within 45 days of the date of the Board's notice of determination or redetermination becomes final, the taxpayer may be relieved of the late payment penalty, provided the taxpayer satisfactorily completes the installment payment proposal.

Confidential Taxpayer Information – Tax Preparers
Revenue and Taxation Code Section 11656, 38707

Prohibits the disclosure of confidential taxpayer information by tax preparers.

Law Prior To Amendment:

Among the inalienable personal rights listed in Article I of the California Constitution, is the right to privacy. Consistent with this provision, current law prohibits the Board and its employees from divulging confidential information about the business affairs of taxpayers registered with the Board. Any violation of these laws is a misdemeanor, punishable by a fine of not less than \$1,000 and not more than \$5,000, or imprisonment not to exceed one year in the county jail, or both a fine and imprisonment, at the discretion of the court. Current law does not prohibit tax preparers from divulging tax or fee information relating to taxes and fees collected by the Board.

Comment:

This provision, which is consistent with Section 7216 of the United States Code for purposes of the Federal Income Tax Law, and Section 17530.5 of the Business and Professions Code for purposes of federal or state income tax returns, makes it a misdemeanor for any person who is engaged in the business of preparing or providing services in connection with the preparation of Board-administered tax or fee returns, to disclose any information furnished to him or her for, or in connection with the preparation of any such return, or to use any such information for any purpose other than to prepare, or assist in preparing, any such return.

Fee and Expense Reimbursement
Revenue and Taxation Code Section 11657, 38708

Changes the effective date for which reimbursement of fees and expenses may be awarded.

Law Prior To Amendment:

Under current law, a taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the Board if the Board finds that the action taken by the Board staff was unreasonable. Under existing provisions, the amount of reimbursed fees and expenses is limited to the fees and expenses incurred after the date of the filing of the petitions for redetermination and claims for refund.

Comment:

This provision, which conforms to the Franchise Tax Board's SB 94 (Ch. 931, Stats. 1999), changes the effective date from which reasonable fees and expenses may be granted, from the date the petition or claim for refund is *filed* to the date the notice of determination is *issued*.

Refund Claims - Disability
Revenue and Taxation Code Section 11553.5, 38602.5

Suspends the statute of limitations on filing refund claims during periods of disability.

Law Prior To Amendment:

Under both the IRS Restructuring and Reform Act of 1998 and the Sales and Use Tax Law, as added by AB 1638 (Stats. 1999, Ch. 929), a taxpayer is allowed equitable tolling of the statute of limitations for refund claims during any period in which the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment expected to result in death or to last for a continuous period of not less than 12 months. However, tolling does not apply for periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf on financial matters.

Current law specifies the period in which claims for refund are required to be filed for any overpayments. The Board's tax programs require a claim for refund to be filed no later than three years from the due date of the return (four years under the Private Railroad Car Tax Law), or six months from the date of the overpayment, whichever period expires later. Current law does not provide for equitable tolling under any circumstances.

Comment:

The Board's conformance to the Act provides equitable relief for those taxpayers that qualify, and would not likely result in a significant increase in staff workload or loss in revenues.

Installment Payment Agreements – Annual Statement*Revenue and Taxation Code Section 11253.5, 38504.5*

Requires the Board to provide annual statements to taxpayers who have entered into installment payment agreements.

Law Prior To Amendment:

Under both the IRS Restructuring and Reform Act of 1998 and the Sales and Use Tax Law, as added by AB 1638 (Stats. 1999, Ch. 929), the IRS and Board are required to provide an annual statement to every taxpayer with an installment agreement indicating the initial balance at the beginning of the year, the payments made during the year, and the remaining balance at the end of the year.

AB 1638 also granted authorization to the Board to enter into installment payment agreements with taxpayers under the Special Taxes, Private Railroad Car Tax, and the Timber Yield Tax programs. Statutory conformance with the Act and the Sales and Use Tax Law would enhance the Board's services to taxpayers who have entered into these agreements by requiring the Board to provide clear explanations of accrued interest and penalties on their respective tax liabilities. It would also allow taxpayers to clearly track their remaining outstanding liabilities with the Board of Equalization.

Comment:

Although the Board intends to provide taxpayers with this type of information on their installment payment plans without a statutory requirement, it is necessary to add these provisions to the law in order to provide taxpayers with legal certainty. It should be noted that these provisions do not apply to taxes due under the Motor Vehicle Fuel License Tax Law, since those taxes are collected by the State Controller and not the Board.